

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

LEHMAN BROTHERS SECURITIES AND
ERISA LITIGATION

09-md-2017 (LAK)

This document applies to:

American National Insurance Co. v. Fuld, 09-cv-2363 (LAK)
Arthur N. Abbey v. Ernst & Young LLP, 11-cv-4278 (LAK)
Retirement Housing Foundation v. Fuld, 10-cv-6185 (LAK)
Starr Int'l U.S.A. Invests. LC v. Ernst & Young LLP, 11-cv-3745 (LAK)
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PRETRIAL ORDER NO. 100

LEWIS A. KAPLAN, *District Judge*.

The Court is in receipt of three letters addressing the impact of the Supreme Court's recent decision in *Omnicare Inc. v. Laborers District Counsel Construction Industry Pension Fund*¹ on the pending motions for summary judgment in the above-captioned cases. The first [DI 1641], from counsel for defendant Ernst & Young ("EY") in the *American National Insurance Co.*, *Abbey*, and *Starr* actions, argues that *Omnicare* effectively confirmed the correctness of the standard previously adopted by this Court regarding proof of liability for opinion statements under Section 11 of the Securities Act of 1933.² Another letter, sent by counsel for EY in *Retirement Housing Fund* [DI 1643], joins in these arguments.

A third letter, from counsel for plaintiffs in the *Starr* action [DI 1642], disputes EY's assertions. By contrast, plaintiffs request "[i]n light of *Omnicare* and the complicated and extensive record before the Court on EY's motion for summary judgment . . . the opportunity to brief fully the impact of the Supreme Court's recent actions on the pending motion."³

In all the circumstances, the Court believes that additional briefing is appropriate. EY shall file a single consolidated memorandum addressing the significance of *Omnicare* with respect to its summary judgment motions no later than May 1, 2015. Plaintiffs may respond by filing a single consolidated memorandum no later than May 22, 2015. Defendants may file a single consolidated reply memorandum no later than June 5, 2015. Neither EY's nor plaintiffs' memorandum shall exceed twenty-five pages. Any reply

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No. 13-435 (S. Ct. Mar. 24, 2015).

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15 U.S.C. § 77k(a). See also *In re Lehman Bros. Sec. & ERISA Litig.*, 799 F. Supp. 2d 258, 302-03 (S.D.N.Y. 2011).

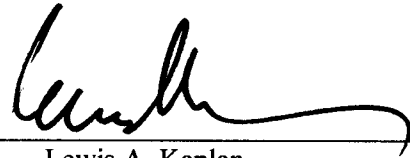
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DI 1632 at 5.

memorandum shall be limited to ten pages.

SO ORDERED.

Dated: April 2, 2015

A handwritten signature in black ink, appearing to read 'Lewis A. Kaplan', written over a horizontal line.

Lewis A. Kaplan
United States District Judge